



MIKE PENCE, *Governor*
JAMAL L. SMITH, *Executive Director*

EEOC No.: 440-2014-00456

██████████,
Complainant,

v.

PROFESSIONAL TRANSPORTATION, INC.,
Respondent.

NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(c).

On January 29, 2014, ██████████ ("Complainant") filed a Complaint with the Commission against Professional Transportation ("Respondent") alleging discrimination on the basis of sex in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) ██████████

██████████ Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint. An investigation has been completed. Both parties have submitted evidence. Based on the final investigative report and a full review of the relevant files and records, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because of his sex. In order to prevail, Complainant must show that: (1) he is a member of a protected class; (2) he suffered an adverse employment action; (3) he was meeting Respondent's legitimate business expectations; and (4) similarly-situated female employees were treated more favorably under similar circumstances. It is evident that Complainant falls within a protected class by virtue of his sex and undisputed that he suffered an adverse employment action when Respondent terminated his employment on or about September 23, 2013; however, evidence shows that he was meeting Respondent's legitimate business expectations but was treated less favorably than similarly-situated female employees.

By way of background, Complainant was originally hired by Respondent's predecessor in May 2009 and hired by Respondent on or around August 23, 2012. At all times relevant to the Complaint, Respondent's policies and procedures prohibited the falsification of records or reports as well as the usage of its company vehicle for non-business purposes and provided that such unauthorized behavior could result in termination without the implementation of progressive discipline. Nonetheless, Respondent asserts that it treats its employees equally in the imposition of discipline for certain infractions.



At all times relevant to the Complaint, Complainant worked as a Transporter Driver for the railroad crew. During the course of his employment, Respondent asserts that Complainant falsified time, was the only employee to log over 8 hours per shift, and used the company vehicle for personal tasks in contravention of policy and procedure. As such, on or about September 23, 2013, Respondent terminated Complainant's employment for these infractions. However, Complainant as well as witness testimony asserts that Constance Sims, another Transporter Driver, served as a relief to several employees, but was frequently late, causing other Transport Drivers to work in excess of their scheduled shifts. Specifically, Complainant alleges that on the days in question, Sims was scheduled to relieve him but was late, requiring him to wait for her to arrive and subsequently, causing him to work longer than the usual 8 hour shift. Moreover, three other Transporter Drivers substantiate Complainant's claims that Sims was always late, requiring other employees to work longer than scheduled in order to maintain coverage until she arrived, and that Complainant was a reliable worker who met Respondent's legitimate business expectations. It is also important to note that Complainant as well as the three witnesses assert that it is likely Sims was falsifying her time as she was late on a regular basis when relieving other drivers. As such, evidence shows that Complainant simply reported his time accurately, documenting the entire time he worked, including the time worked in excess of 8 hours because of Sims' tardiness. Ironically, the witnesses also admit that several employees, including Sims, used their work vehicle for personal tasks, without being disciplined. Moreover, another female driver, Toya Moore, walked off the job at one point because she informed Respondent that she was tired of working 16-hour shifts, but was rehired shortly thereafter, without repercussion.

Despite Respondent's assertions, there is evidence that it treated Complainant less favorably than similarly-situated female employees. While there is sufficient evidence to believe he was meeting Respondent's legitimate business expectations, there is also clear evidence that Complainant was terminated for alleged infractions committed by similarly-situated female drivers who were not disciplined for their actions. Simply stated, there is sufficient evidence to show that Respondent treated similarly-situated female employees more favorably under similar circumstances and probable cause to believe that a discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged in the above-referenced case. Ind. Code § 22-9-1-18, 910 IAC 1-3-5. The parties may elect to have these claims heard in the same circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election, or the Indiana Civil Rights Commission will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

November 21, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.,

Deputy Director

Indiana Civil Rights Commission